

SAN BERNARDINO ASSOCIATED GOVERNMENT (SANBAG)

FREEWAY SERVICE PATROL C09093

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ATTACHMENTS:

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ATTACHMENT B

Sample Proposal Letter
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Price Summary Sheets
Proposal Form

ATTACHMENT C

Sample Contract Agreement

SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG)

1.0 EXAMINATION OF RFP DOCUMENTS

Proposer shall be solely responsible for examining, with appropriate care, the Request for Proposal (RFP) documents, including any Addenda issued during the proposal period, and for informing itself with respect to any and all conditions which may in any way affect the amount or nature of proposal, or the performance of the work in the event Proposer is selected. Failure of the Proposer to so examine and inform itself shall be at its sole risk and no relief for error or omission will be given.

2.0 INTERPRETATION OF RFP DOCUMENTS

Proposer may request of the San Bernardino Associated Governments (SANBAG) in writing, prior to submission of proposal, clarification or interpretation of the RFP Documents as described in Section 3.0. Where such interpretation or clarification requires a change in the RFP Documents, SANBAG will issue an Addendum. Proposer shall acknowledge receipt of any and all Addenda in its Proposal Letter. SANBAG shall not be bound by and Proposer shall not rely on any oral interpretation or clarification of the RFP Documents.

3.0 QUESTION AND ANSWER PROCESS

Questions regarding the content, intent or procedural matters of this RFP should be addressed to:

Kelly Lynn, Air Quality/Mobility Programs Manager
San Bernardino Associated Governments (SANBAG)
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A MANDATORY pre-proposal meeting is scheduled for Thursday, **November 13, 2008 at 11:00 a.m.** in the Super Chief Conference Room, at SANBAG. If a prospective Proposer arrives to this **MANDATORY** meeting at 11:15 a.m. or later, the Proposer will be considered not having attended the **MANDATORY** meeting. Proposers that do not attend this **MANDATORY** meeting or arrive at 11:15 a.m. or later will not qualify to submit a proposal in response to the RFP – no exceptions. Following the mandatory pre-proposal meeting, questions may be submitted in writing until 4:00 p.m. on

Tuesday November 18, 2008. Responses, if any, to written questions received after the pre-proposal meeting will be made in writing and distributed via email to all pre-proposal meeting attendees by Friday, November 21, 2008 at 5:00 p.m. Any Proposer questions received by SANBAG after 4:00 p.m. on November 18, 2008 **WILL NOT** be acknowledged or answered.

Except for Ms. Lynn, please note that potential Proposers should NOT contact SANBAG Board Members or SANBAG Board Member's staff regarding any aspect of this RFP. It is intended that the selection of a consultant shall be made on merit alone, based on the processes and criteria set forth in the RFP. Violation of this condition shall, at SANBAG's sole discretion, be cause for immediate disqualification of a Proposer's proposal.

4.0 SCOPE OF SERVICES

This Request for Proposal (RFP) is being advertised by the San Bernardino Associated Governments (SANBAG) to provide a Freeway Service Patrol (FSP) service. SANBAG has entered into a Memorandum of Understanding with the California Department of Transportation (Caltrans) and the California Highway Patrol (CHP) to operate a freeway service patrol for traffic mitigation, as well as air quality improvement within San Bernardino County.

Section 21718 (a) of the California Vehicle Code specifically authorizes the CHP to be responsible for FSPs stopping on freeways for the purpose of rapid removal of impediments to traffic. Article 3, Section 91, of the Streets and Highways Code, states that Caltrans has responsibility to improve and maintain the state highways. Caltrans also has the responsibility for traffic management and removing impediments from the highways.

If awarded a contract, the Contractor shall have 86 days after the notice to proceed in which to acquire the required equipment, have it inspected, hire and train drivers and be operable. Any company who cannot meet the 86 day operational requirement shall not be awarded the proposal.

4.1 Contract Representatives:

SANBAG, Caltrans and the CHP will jointly oversee the service. CHP is

responsible for dispatch services to incident locations within the vehicle's patrol limits, otherwise referred to as "Beats". The dispatching will be done in accordance with the contract for the service. A manual will be given to the successful Contractor explaining the types of incidents to which his/her vehicle operators may be dispatched. Please note that this manual, also known as the Standard Operating Procedures (SOP) is updated as needed, and that the contractor is responsible to operate and adhere to the most current version of the SOP. Also note that the successful Proposer(s) which enters into an agreement with SANBAG for these services will have the SOP and any updates referenced into the agreement and therefore the SOP has contractual requirements associated with it as well.

4.2 Service Location:

The FSP operates on selected freeway segments referred to as "Beats". Each Beat has specific turnaround locations and designated drop locations identified by the CHP. Attachment "A" shows the specific limits, number of tow trucks, number of back-up trucks, hours of operation and tentative holidays on which the cost of each beat shall be based. SANBAG reserves the right to add or delete holidays to the work schedule. Travel time to and from the Beat will be at the expense of the Contractor.

At any time during the contract's term, SANBAG reserves the right to adjust Beat specifications to better accommodate demand for the service. These changes can occur during the course of the contract through written change orders. If warranted a Contractor may be requested by CHP, this will be on a case-by-case basis, to go beyond the limits of their assigned beat area to assist a motorist in an adjacent beat area. Tow Operators may be permitted to do this only upon CHP approval.

4.3 Description of Service:

The purpose of the project is to provide for the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Where conditions permit, safe removal of small debris will be required. Contractor vehicles shall be exclusively dedicated to the service during the hours of operation. All vehicle maintenance activities shall be conducted during non-service hours.

The Contractor's vehicle operators shall assist motorists involved in minor accidents and those with disabled vehicles. They shall be responsible for clearing the freeway of automobiles, small trucks and small debris. When and where conditions warrant, service may be executed on the freeway shoulders. Where conditions do not warrant, vehicle operators will remove the vehicles from the freeway to provide service. The vehicle operators shall continuously patrol their assigned Beat, respond to CHP dispatched calls for service, use the designated turnaround locations and use the CHP designated drop locations.

FSP vehicle operators may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses and refill radiators. Vehicle operators may spend a maximum of ten (10) minutes per disablement in attempting to mobilize a vehicle.

All FSP services shall be provided at no cost to the motorist. FSP vehicle operators shall not accept gratuities, perform secondary towing services, recommend secondary tows, or recommend repair/body shop businesses. To promote a safe work environment and to maintain a level of professionalism, the Standard Operating Procedures (SOP) manual must be followed by the tow company and their vehicle operators as this document and all updates will be incorporated into the Contractor's agreement. Please note that the SOP is updated as needed, and that the Contractor is responsible to operate and adhere to the most recent version of the SOP at all times. **Drivers found not to be in compliance with FSP procedures defined in the SOP may be suspended or terminated from the FSP program and the company may be fined three (3) times the hourly contract rate in one (1) minute increments until a replacement vehicle is provided (driver and truck must return to beat compliant with all FSP requirements), or fined for the entire shift at three (3) times the hourly rate at the discretion of the FSP Field Supervisors.**

If a disabled vehicle cannot be mobilized within the ten-minute (10) time limit, it shall be towed to a designated drop location identified by the CHP. The motorist can request the FSP vehicle operator to call the CHP Communications Center to request a CHP rotational tow or other services. FSP vehicle operators shall not be allowed to tow as an independent contractor from an incident that occurred during the FSP shift unless called as a rotation tow by CHP. If called as a rotation tow after a FSP shift, the vehicle operator must remove all FSP markings such as vests, uniforms and magnetic vehicle signage.

There may be some instances where FSP vehicle operators may be requested to provide assistance to CHP officers. FSP vehicle operators shall follow the instructions of the CHP officer at the scene of any incident within the scope of the FSP program.

4.4 Equipment Requirements:

A. Tow Truck Requirements:

Vehicles will be exclusively dedicated to the FSP during its hours of operation.

The FSP will utilize at a minimum, Class A trucks with a minimum gross vehicle weight rating of 14,000 pounds, dual wheel chassis and four (4) ton recovery equipment rating. All trucks and beds used in the Freeway Service Patrol program shall be less than five (5) years old, and free of any physical damage.

Prior to commencement of service, the CHP will inspect each vehicle designated for the FSP to ensure that it meets the vehicle specifications and to ensure that it meets or exceeds safety requirements. These inspections will occur prior to the start of service. Succeeding inspections will occur periodically as determined by the CHP. Documentation of the vehicle identification number and successful completion of the inspection will be kept on file at the CHP office and Contractor's base office. Any unsafe or poorly maintained vehicle(s) or improperly equipped vehicle(s) shall not be allowed into service, and if discovered during the shift, shall be removed from service or repaired as directed by the CHP, and **the Contractor shall be fined three (3) times the hourly contract rate in one (1) minute increments**. Spare, also known as "back-up", vehicles will be required to complete the shifts of vehicles removed from service. The Contractor will be required to have a spare vehicle available for service at all times.

FSP vehicles bearing the service patrol title, logo, and vehicle identification number shall be painted white (includes the hood, fenders, doors, boom and bed area – the entire truck is to be painted white). No trim will be allowed. Lettering shall be in block lettering and shall be no less than 2 inches and no greater than 4 inches in height. Lettering can only be black in color (only black will

be allowed, no other colors will be permitted). The overall look of the truck must be approved by CHP prior to service implementation; therefore any questions regarding this policy may be discussed with CHP prior to implementing, as truck compliance with current state FSP standards is required. No other accessory equipment or signage (bumper stickers, employment advertisement, and so forth) shall be mounted or installed without prior CHP approval. This includes but is not limited to bras, chrome wheel covers or window tint.

Each tow truck shall be equipped, as a minimum, with the following:

1. Wheel lift towing equipment, with a minimum lift rating of 3,000 pounds. All tow equipment shall include proper safety straps.
2. Boom with a minimum static rating of 5,000 pounds.
3. Winch Cable - 8,000 pound rating on the first layer of cable.
4. Winch Cable - 100 ft., 3/8-inch diameter, with a working limit of 3500 pounds.
5. Towing slings rated at 3,000 pounds minimum.
6. Two (2) Tow chains 5/16" alloy or OEM specs., J&T hook assembly.
7. Rubber faced push bumper.
8. Mounted spotlight capable of directing a beam both front and rear.
9. Amber warning lights with front and rear directional flashing capability, with on/off switch in cab.
10. Public address system.
11. Power outlets ("hot boxes"), front and rear mounted, with outlets compatible to 12-volt booster cables.
12. Heavy duty, 60+ amp battery.
13. Radios with the ability to communicate with the Contractor's base office.
14. Programmable scanners capable of scanning between the 39 and 48 MHz used by the CHP. Scanners need to be capable of scanning CHP Police frequencies, and must be affixed for safety concerns.
15. Suitable cab lighting.
16. Trailer hitch capable of handling a 1 7/8-inch ball and 2 inch ball.
17. One (1) 1 7/8-inch ball and one (1) 2 inch ball.
18. Rear work lights.
19. Safety chain D-ring or eyelet mounted on rear of truck.
20. Motorcycle Straps (2)
21. Diesel fuel in plastic jerry cans (5 gallons)
22. Unleaded gasoline in plastic jerry cans (5 gallons)
23. Safety chains min. 5 ft. (2)
24. First aid kit (small 5" x 9") (1)
25. Fire extinguisher aggregate rating of at least
4 B-C units (1)
26. Pry bar - 36" or longer (1)
27. Radiator water in plastic container (5 gallons)
28. Sling crossbar spacer blocks (2)
29. 4" x 4" x 48" wooden cross beam (1)
30. 4" x 4" x 60" wooden cross beam (1)

31. 24" wide street broom	(1)
32. Square point shovel	(1)
33. Fusees (highway flares), 15 minute, or Fusees (highway flares), 30 minute	(36) (20)
34. Cones 18"	(6)
35. Hydraulic jack, 2-ton , floor	(1)
36. Four way lug wrench (1 std.)	(1)
37. Four way lug wrench (1 metric)	(1)
38. Rechargeable air bottle, hoses and fittings to fit tire valve stems, 100 psi capacity	(1)
39. Flashlight and spare batteries	(1)
40. Tail lights/brake lights, portable remote with extension cord	(1 set)
41. Booster cables, 25 ft. long minimum, 3-gauge copper wire with heavy-duty clamps and one end adapted to truck's power outlets	(1 set)
42. Funnel, multi-purpose, flexible spout	(1)
43. Pop-Up Dolly, portable for removing otherwise untowable vehicles	(1)
44. 5-gallon can with lid filled with clean absorb-all	(1)
45. Empty trash can with lid (5 gallon)	(1)
46. Lock out set	(1)

Each FSP truck will be required to have a toolbox with the following minimum number of tools/supplies. A tool kit for small equipment items is required. The list may be supplemented at the Contractor's option and expense.

47. Screwdrivers--	
i. Standard-1/8", 3/16", 1/4", 5/16"	(1 each, min).
ii. Phillips head - #1 and #2	(1 each, min).
48. Needle nose pliers	(1)
49. Adjustable rib joint pliers, 2" min. capacity	(1)
50. Crescent wrench - 8"	(1)
51. Crescent wrench - 12"	(1)
52. 4 lb. hammer	(1)
53. Rubber mallet	(1)
54. Electrical tape, roll	(1)
55. Duct tape, 20 yard roll	(1)
56. Tire pressure gauge	(1)
57. Mechanic's wire (roll)	(1)
58. Bolt cutters	(1)

The vehicle operator shall be required to complete a pre-operation shift inspection log of the vehicle as well as inventory the required equipment prior to the start of each and every shift. A shift inspection/inventory log shall be completed by the vehicle operator prior to the start of each shift and be available for inspection. Any

item missing must be replaced prior to the start of the shift. All equipment stored on top of the truck shall be secured to the truck.

B. Spare (also known as Back-Up) Vehicles:

The Contractor shall be required to have one spare certified FSP tow truck available per beat unless otherwise permitted by SANBAG and CHP in writing. The spare vehicle should be used when a regular vehicle is unavailable. The spare vehicle shall meet the same requirements for equipment, set-up and color as a regular truck. It shall meet all the vehicle equipment specifications.

C. Vehicle Breakdown and Other Missed Service:

The spare vehicle must be in service on the beat within 45 minutes of the time a permanently dedicated vehicle is taken out of service for any reason. The Contractor shall not be paid for the time period that the contractually required trucks are not in service. **If a vehicle is not made available within the 45 minute time period, the Contractor shall be fined three (3) times the hourly contract rate in 1 minute increments until a replacement vehicle is provided. If a truck is not ready due to breakdown at the start of a shift, the fine time will be calculated from the start of the shift. If the entire shift is missed, Contractor shall be fined for the entire shift at three (3) times the hourly rate. Vehicle maintenance shall be performed during non-FSP service hours.**

In addition, not having a certified FSP "spare or back-up" driver available is not an allowable excuse for not having a spare (back-up) vehicle on the beat within the 45 minute time period. If the Contractor does not have a dedicated or spare truck on the beat because a certified FSP driver is not available, the Contractor shall be fined three (3) times the hourly contract rate in 1 minute increments until a certified FSP replacement driver is provided. If the entire shift is missed because a driver was not available, the Contractor shall be fined for the entire shift at three (3) times the hourly rate.

D. Vehicle Identification:

It shall be the vehicle operator's responsibility to place detachable FSP markings on each vehicle during the service hours and to remove the detachable markings immediately upon completion of each shift. SANBAG will supply each Contractor with the appropriate number of

detachable markings for each Beat(s). If a marking is lost or damaged, the Contractor shall be responsible for the cost of the replacement markings. All FSP markings shall be returned at the termination of the contract. The cost of any SANBAG and/or Caltrans/CHP supplied item and/or equipment not returned shall be deducted from the Contractor's final payment.

Freeway Service Patrol markings as well as vehicle numbers shall be required on both sides of all trucks. The detachable markings (magnetic FSP signage), provided by SANBAG, must be placed on the center of both doors (driver and passenger doors) of the vehicle. The vehicle operator shall be required to keep the title and logos clean, straight and in readable condition throughout the service patrol's operation. The operator is also required to keep the magnetic signage flat (do not bend in any way) and clean while being stored during non-FSP operational hours.

E. Communications Equipment:

Each FSP vehicle shall be equipped with various communication devices that will enable the vehicle operator to communicate with the CHP Communications Center. All vehicles shall be equipped with an Automatic Vehicle Location (AVL) system, radios, handheld/PDAs, *and data collection*. The AVL system, radios, GPS, handheld/PDA equipment shall be purchased, owned and supplied by SANBAG. SANBAG shall select the equipment installation vendor.

The Contractor shall be responsible for maintaining the security of the vehicle communication equipment. The Contractor shall be liable for any damage other than normal wear and tear to the communication equipment. The Contractor shall also be liable for the full replacement value of the communication equipment installed in the trucks while in the care, custody and control of the equipment. SANBAG shall pay for repair fees for normal wear and tear to equipment. However, SANBAG will deduct repair fees as well as the full replacement cost of any SANBAG equipment due to improper use or negligence by the Contractor from any payment due to the Contractor under this agreement. SANBAG supplied vehicle equipment shall be returned upon contract termination. The cost of any equipment not returned shall be deducted from the Contractor's final payment.

Programmable scanners capable of scanning between the 39 and 48 MHz used by CHP shall be supplied by the Contractor and shall be installed in all vehicles.

The Contractor is also required to use wireless cell phones for communications with CHP Communications Center and CHP Field Supervisor. Wireless cell phones shall be purchased and maintained by Contractor. Contractor will also be responsible for all operating costs as well. In addition, tow operators are not permitted to take pictures, video or capture any other images while performing FSP duties during FSP operational hours. These actions will not be tolerated and a driver may be terminated if it is discovered they are doing so.

In addition, any data input into the PDA device shall not be allowed while the vehicle is being operated/driven. Use of other devices while driving/operating a vehicle such as cell phones are subject to California State Law.

The FSP vehicles shall be equipped with a public address system. The public address system shall have the capability for the driver of the disabled vehicle to hear instructions transmitted from the cab of the FSP vehicle when the FSP vehicle is directly to the rear of the disabled vehicle.

The Contractor shall purchase and maintain a computer workstation with high speed internet access and email to communicate with SANBAG staff, and transfer FSP data collected with handheld/PDA units. Handheld/PDA units **shall be downloaded at the end of each shift** to the computer workstation; therefore the computer workstation will need to be easily accessed by drivers after each shift. The computer workstation shall be a PC Pentium4 2.4Ghz or AMD Athlon XP 2800 or greater based machine with at least 256MB memory, 10 gig hard drive, network card, CDROM, optical mouse, keyboard and monitor. Computer workstation shall be equipped with the following software; Windows XP (or Windows Vista), AntiVirus software (Norton, McAfee, Trend Micro), Microsoft Active Synchronizer.

The Contractor must ensure that the computer equipment and Handheld/PDA units are inspected and cleaned on a quarterly basis, or as needed. This includes updating operating systems with security patches, loading system updates, and cleaning the interior of the computer work station. All Handheld/PDA units should have the

exterior protective case cleaned (protective outside case) and the stylus and screen protector shall be inspected for functionality and serviceability. Worn items shall be immediately reported to SANBAG.

All workstations and Handheld/PDA's must be kept in a secure location. During non-FSP operational hours, Handhelds/PDA's shall not be left in a tow vehicle or go home with a driver or anyone else. All Handhelds/PDA's must be connected to a battery charger in the secure workstation area at the tow operator's facility during non-FSP operational hours. PDA's are to be with the driver in their FSP truck during FSP operational hours, or connected to a battery charger in the designated secure workstation of the tow operator's facility during non-FSP operational hours. Any other location shall not be permitted.

Contractor shall immediately report any issues with work station or PDAs. Contractor is directly responsible to ensure computer work station is operating, can interface with PDAs and **has internet access at all times.**

The contractor shall provide access to the work station and PDAs for SANBAG staff, or their designated designee, at **any time** during the course of the Contract. **In addition, the Contractor shall also make the work station available to SANBAG, or its designee, 30 calendar days prior to the start of the new service (service to start May 1, 2009).**

The contractor shall be available to review data with SANBAG, or its designee, at any time. Data shall be reviewed using the pre-defined reports created in Microsoft Access on the workstation computer. The contractor shall review data for accuracy, and ensure that any errors and/or edits to the data are documented and forwarded to SANBAG for review.

The Contractor shall provide a quarterly inspection report to SANBAG indicating the status of all equipment. SANBAG will provide the submittal form. Tow operators should consider the accurate completion and timely return of this form as part of their contract requirements.

The Contractor shall allow SANBAG staff or its representative access to the workstation and handheld/PDA units at anytime.

F. Equipment Tampering

Tampering with FSP communication/tracking equipment so that it does not function properly to SANBAG's specifications, and/or is disconnected or is moved (without FSP Management authorization) from its original installed location is strictly prohibited. This includes but is not limited to: breaking evidence tape/connection sealer on equipment connections, cutting wires or cable, moving mounted equipment (speakers, microphones, antennas, etc.), rerouting any wiring, disconnecting any connectors, and interfering with the operations of the equipment is strictly prohibited.

If tampering is suspected, FSP Management may conduct an inspection of the equipment on the Beat or the vehicle may be sent to a designated location determined by FSP Management.

1. If tampering is found while the vehicle is used during FSP operational hours, the driver and vehicle will be immediately taken out of service and the Contractor shall be fined in one (1) minute increments at three (3) times their hourly rate, until such time that the back-up truck is deployed. Please note that if tampering is discovered the penalties (three times the hourly rate in one minute increments) shall begin immediately upon the tampering being discovered. The normal 45 minute back-up truck time allowance will not be considered "non-penalty" time under these circumstances. The penalties shall begin immediately upon the tampering being discovered.
2. If the vehicle is suspected to have equipment that has been tampered with, it may be sent to a designated location determined by FSP Management and CHP for an inspection. If tampering is found, the Contractor will be retroactively fined three times the hourly rate in one minute increments from the time the tampering was first suspected. The penalties will continue until a certified FSP back-up truck is deployed. The normal 45 minute back-up truck time allowance will not be considered "non-penalty" under these circumstances.

Tampering Repairs

If tampering is discovered during FSP operational hours the vehicle will

be taken out of service and remain out of service until the repair and the documentation can be completed by the FSP Program designated installer. FSP Management determines the designated installer. The transportation, labor and repair costs will be the responsibility of the Contractor. Costs incurred to repair and document the equipment will be deducted from the tow operators monthly invoice.

Tampering Penalties

The Contractor will also be assessed a \$250 fine (whether the tampering is discovered while on the Beat, or if it was suspected and later confirmed) per incidence on their monthly invoice. If it is determined that the Driver tampered with the equipment, the Driver will be suspended for a minimum of 30 days for the initial tampering offense and subject to termination from the FSP Program for any subsequent tampering violations.

G. Vehicle Operators:

All potential vehicle operators shall be required to have a safe driving record and current Class C driver's license. All vehicle operators shall be 18 years of age or older at the time of background check. Potential vehicle operators shall be subject to driving record and criminal background checks through the California Highway Patrol. Potential vehicle operators shall be sufficiently experienced in the tasks of tow truck operations and proficient with all required Freeway Service Patrol equipment to provide safe and proper service. Any certified driver from other FSP areas will be evaluated on a case by case basis. All potential vehicle operators must be capable of demonstrating their tow operating abilities prior to formal CHP training. Additionally, the vehicle operators will be required to exercise good, sound judgment in carrying out their duties.

Vehicle operators shall be required to inform the CHP Communications Center at any time he/she leaves the assigned Beat. This includes replenishing expendable items such as gasoline, fire extinguisher, breaks, etc. The vehicle operator shall be required to immediately notify the CHP Communications Center upon a tow truck breakdown. The FSP vehicle operator shall be required to complete an assist records for each incident. Each assist record should be accurate. Contractors or Operators providing false or misleading

information to FSP Management shall be subject to disciplinary action and handled on a case by case basis.

The CHP, Caltrans, and SANBAG maintain strict drug and alcohol policies. Contractors shall have an alcohol and drug program that includes at a minimum, a drug and alcohol free workplace policy, and an employee alcohol/drug-testing program. Any FSP vehicle operator found working under the influence of drugs or alcohol shall be immediately removed from the FSP program by the Contractor. The Contractor shall be responsible for providing a certified replacement driver for that vehicle.

The Contractor shall also be an active participant in the DMV Pull Notice Program and penalties shall apply pursuant to Section 4.4 Equipment Requirements paragraph C.

If a vehicle operator is convicted of a crime involving a stolen vehicle, stolen property, violence, drugs or moral turpitude, fraud related to the towing business, or misdemeanor or felony driving while under the influence of alcohol or a drug, the Contractor shall permanently remove that vehicle operator from duties under the FSP program. If a vehicle operator is charged with any of the above crimes, the Contractor shall immediately suspend that vehicle operator from duties under this program pending the outcome of the criminal case. If the vehicle operator is not convicted, or is ultimately convicted of a lesser crime not described above, SANBAG retains the right to have the Contractor remove that vehicle operator from the duties under the FSP program.

All vehicle operators, including back-up drivers, shall be required at Contractor's expense to complete the CHP two-day training program which costs up to \$50.00 (fee is for the DL64 Tow Truck Driver Certificate) per driver. Contractors shall pay all FSP operators and back-up drivers for attending the training. No driver will be allowed to begin patrolling without attending the **MANDATORY** training classes. Any vehicle operator who is found on patrol without completing the **MANDATORY** training classes may be prohibited from further FSP service and the Contractor's contract may be terminated immediately.

Mandatory CHP refresher training classes shall be scheduled during non-FSP hours. A minimum of four (4) hours refresher training per year

shall be required (at Contractor's expense). **Contractors shall pay all FSP operators and back-up drivers for attending the required training.**

Vehicle operators will be required to utilize a Handheld/PDA to input information about each assist; which will include location, vehicle make, model, license number, type of assistance provided, etc. Vehicle operators will be trained on using Handheld/PDA units to enter data using SANBAG data collection software, and using a Handheld/PDA unit to communicate with CHP staff while in the field.

DRIVING RECORD AND CRIMINAL HISTORY CHECK

As required by California Vehicle Code Section 2430, all applicants and owners are required to have a driver's license and criminal history check. Only after a completed CHP 234F and CHP 234 supplemental is received and accepted by CHP, a driver's license and criminal history check will be performed.

The driver's license check will consist of confirming that the applicant has a valid driver's license and the applicant's point count is within standards set forth in this SOP (refer to Chapter 11, Annex A).

The criminal history check will consist of a preliminary background check to see if the applicant meets the criteria for a Tow Truck Driver Certificate as outlined in California Vehicle Code Section 13377, and the FSP contract. Any operator or potential operator not meeting the requirements put forth in the Tow Service Agreement for Rotational Tow Operator (HPM 81.2, Vehicle Procedures Manual, Element 15 (C and D), Annex GG, "Criminal Conviction Disqualifications for Rotational Tow Operator/Drivers") will be automatically excluded from the FSP Program. In addition, RCTC or SANBAG, and/or CHP may, in its sole discretion, require a contractor to replace any driver or potential driver who it determines is not suitable to represent the FSP Program with the public based on the background check. If the applicant passes the preliminary check, then the applicant shall submit to fingerprinting.

Background checks will be completed by CHP within five (5) working days of the acceptance of a CHP 234F.

H. Operator Equipment:

It shall be the responsibility of the Contractor to provide the vehicle operator with specified uniforms, shoes, and other equipment. The equipment includes navy blue jump suits or shirts and pants. If coveralls are worn they shall have two-way zip front with heavy duty brass zipper. Coverall or shirt sleeves shall be half raglan type or set-in sleeve with pleated-action back. Long sleeves may have plain barrel cuff or be equipped with snap or button closure on wrist. The length of the sleeve on short-sleeve coveralls/shirts shall come to within approximately 1 inch of the inside forearm when the wearer's arm is bent at a 90 degree angle.

The coveralls shall have shape holding sanforized waist banding with elastic inserts for trim fit. Legs shall be moderately tapered to avoid excessive fullness. H.D. Lee Company style No. 018-3041 (Navy Blue) or Commercial Uniform Co. style No. 201 (Navy Blue) or equal. All main seams shall be at least double stitched with good quality thread. Shirts or coveralls shall have one or two chest pockets. Single pocket coveralls/shirts shall have the chest pocket placed on the left.

The first initial of the first name and full last name shall be sewn above the right chest pocket so that it shall be clearly visible with the collar open. Letters shall not exceed ½ inch. A detachable metal nameplate may be worn in place of the embroidered name at the Contractor's option (nameplate must be approved by CHP).

A safety vest with reflective white stripes shall be worn. The safety vest shall be lime-green in color. A small FSP logo (patch) shall be sewn on the front of the safety vest over the left front pocket of the uniform. A large FSP logo (patch) shall be sewn across the middle portion of the back of each safety vest. The name of the vehicle operator (the driver) shall be displayed on the front of the safety vest over the right front pocket of the uniform. The safety vests and FSP logos (small and large patches) will be provided by SANBAG. The Contractor is responsible for having the patches sewn properly on the uniform and the safety vest.

All FSP vehicle operators shall wear general duty black work boots with protective steel toe.

During cold weather, a navy blue sweater or sweatshirt may be worn

under the long sleeve uniform shirt/jumpsuit. A navy blue jacket may also be worn at the Contractor's option, if it meets all the uniform specifications, such as patches.

Rain gear shall be waterproofed material, yellow in color. Reflective 2" white tape shall be applied to both sleeve cuffs and both leg cuffs and across the upper back.

Hats, if worn, shall be baseball type cap, navy blue in color. An "FSP" shoulder patch may be sewn on the hat above the brim. No other logos/names shall be accepted. A picture of the uniform is provided in Attachment "A", FSP Uniform Requirements.

Contractor should refer to the most current SOP in making sure they are following the most recent requirements.

I. Local Office:

The Contractor shall provide a local office for contract administration purposes. This office shall be staffed by either the Contractor or a person who has the authority to conduct business and make decisions on behalf of the Contractor. The office shall have business hours coinciding with Contractor's beat(s) hours of operation. Through the Proposal document shown in Attachment "B", Contractor Representative Form, the Contractor shall designate representatives who will be available at the office during hours of operation to make decisions on behalf of the Contractor. The office shall be established within close proximity to the Contractor's Beat(s) and be located within Riverside, San Bernardino, Los Angeles or Orange Counties. Also note on page 8, Section 4.4C, **a backup vehicle and a certified FSP driver must be available within a 45 minute request of the Beat area.**

This requirement may also determine if the local office is close enough to satisfy the requirements under this section as well.

The Contractor shall also provide **telephone, fax service, and email** through which he/she or a responsible representative who has the authority to conduct business and make decisions on behalf of the Contractor can be contacted during the non-service hours of operation for the length of the contract. During non-business hours, an answering machine provided at the Contractor's expense, shall be available to log calls, take complaints, etc. **A fax machine and an**

email address shall be provided for noticing purposes during operational and non-service hours. The Contractor will be responsible for having a company representative monitor and review messages/notices on a daily basis.

5.0 PROPOSER QUALIFICATIONS

All potential Proposers must have a business license, five (5) years' experience in operating a tow service, and, at a minimum, two (2) years' experience of CHP rotation tow service at the time the proposal is submitted. Additionally, the potential Proposer must comply with all Federal, State and Local laws governing the operation of a tow service in the community in which the beat is located. These qualifications are firm and will not be amended or revised. If you do not meet these minimum qualifications please do not submit a proposal.

6.0 PREPARATION OF PROPOSALS

6.1 General Format of Proposal:

Proposals shall be prepared on bound 8-1/2" x 11" paper, stapled, double-sided with no color (black print only). Proposals should not exceed fifty (50) pages in length, excluding any appendices.

6.2 Proposal Content:

Proposers shall include all forms shown in Attachment "B".

- A. Proposal Letter
- B. Contractor Representative Form
- C. Time and Material Proposal Form
- D. Work plan – which is a detailed narrative explaining your company's understanding of the requirements. Explain in a step-by-step process how your company will approach project implementation, the hiring of and training of staff and operators for the project (including your plans on recruiting and retaining drivers), and how supervision will be conducted so that your agency complies with the contractual and SOP

terms. This must be detailed in writing so that a clear and concise plan is demonstrated to the evaluation committee as to how you intend to meet the project schedule and timeframe, and how the program will be maintained over time. Note that repeating information and requirements in the RFP is not an acceptable response to this section.

E. Proposal Form

7.0 MODIFICATION AND ALTERNATIVE PROPOSALS

Proposer shall submit a proposal in strict conformity with the requirements of the RFP Documents. The proposal shall be complete in itself and shall be submitted within a sealed enclosure in accordance with 10.0 "SUBMISSION OF PROPOSAL/PERIOD OF ACCEPTANCE" instruction herein.

Unauthorized conditions, limitations or provisions attached to a proposal may render it invalid and cause its rejection. Alternative proposals will not be considered unless specifically requested. Oral, telegraphic or telephonic proposals or modifications will not be considered.

8.0 SIGNING OF PROPOSAL/AUTHORIZATION TO NEGOTIATE

Each proposal submitted by Proposer shall be executed by Proposer or by its authorized representative. In addition, Proposer must identify in Attachment "B", Proposal Letter, those persons authorized to negotiate on its behalf with SANBAG in connection with this RFP.

9.0 WITHDRAWAL OF PROPOSALS

A proposal may be withdrawn by the Proposer by means of a written request signed by the Proposer or its properly authorized representative. Such written requests must be delivered to SANBAG's office prior to the date and time for submittal of proposals.

10.0 SUBMISSION OF PROPOSAL/PERIOD OF ACCEPTANCE

An original and eight (8) copies of each proposal must be provided. Each proposal submitted by Proposer shall be delivered to SANBAG's office up to the date and time shown in Section 12.0, Calendar of Events. It is the Proposer's sole responsibility to see that its proposal is received as stipulated. The Proposer must warrant that the cost proposal will remain in effect for 120 days and state such in

their Proposal Letter.

All proposals must be in writing, sealed, and labeled "Freeway Service Patrol". All proposals must be received no later than **2:00 p.m. Friday, December 5, 2008**, irrespective of postmark. All proposals will be date and time stamped upon receipt. No proposals will be accepted after **2:00 p.m.** Postmarks will not be accepted.

11.0 PROPOSAL EVALUATION/CONTRACTOR SELECTION

1. Evaluation Criteria. SANBAG will evaluate the proposals received based on the following criteria:

- a. Qualifications of the Firm

Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; review of client references and their experiences.

- b. Staffing and Project Organization

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.

- c. Work Plan

Depth of Proposer's understanding of SANBAG's requirements and overall quality of work plan identified in Section 6d above; logic, clarity and specificity of work plan; appropriateness of labor distribution among the tasks; plan and ability to recruit and retain drivers; ability to meet the implementation schedule; ability to meet the Beat start time, as well as providing spare vehicles within the required timeframe; utility of suggested technical or procedural innovations.

- d. Cost and Price

Reasonableness of the total price and competitiveness of this amount with other proposals received; adequacy of data in support of figures quoted; basis on which prices are quoted.

e. Completeness of Response

Completeness of response in accordance with RFP instructions; exceptions to or deviations from the RFP requirements that the SANBAG cannot or will not accommodate; other relevant factors not considered elsewhere.

2. Evaluation Procedure. An Evaluation Committee comprised of SANBAG staff, CHP staff and at least one outside FSP agency staff will evaluate all proposals received in accordance with the above criteria. The evaluators in applying the major criteria to the proposals may consider additional sub-criteria beyond those listed. During the evaluation period, SANBAG may interview and conduct on site visits with some or all of the proposing firms.
3. Award. The Evaluation Committee will evaluate the proposals received and will submit, with approval of a SANBAG Policy Committee, the proposal considered to be the most competitive to SANBAG's Board for consideration and selection. The Evaluation Committee may also negotiate contract terms with the selected Proposer prior to award, and expressly reserves the right to negotiate with several Proposers simultaneously and, thereafter, to award a contract that best meets the needs of SANBAG. SANBAG reserves the right to request Best and Final Offers (BAFOs) from some or all of the Proposers.

Negotiations may or may not be conducted with Proposers; therefore, the proposal submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without discussion with any Proposer.

Successful Proposer(s) that enter into Contract negotiations with SANBAG will be expected to execute the approved Contract prior to SANBAG Board approval pursuant to the schedule in Section 12.0.

4. Notifications of Award and Debriefing. Proposers who submit a

proposal in response to this RFP shall be notified in writing regarding the firm who was awarded the contract. Such notification shall be made within ten (10) days of the date the contract is awarded.

12.0 CALENDAR OF EVENTS

RFP Issued	November 5, 2008
MANDATORY Pre-Proposal Conference San Bernardino Associated Governments 11:00 a.m.	November 13, 2008
Last Day to Submit Additional Written Questions by 4:00 p.m.	November 18, 2008
Minutes from Pre-Proposal Conference and Responses to Questions Submitted will be E-Mailed to Pre-Proposal Attendees by 5:00 p.m.	November 21, 2008
Proposals Due by 2:00 p.m.	December 5, 2008
Evaluation Committee Evaluates Proposals Including Calling References & Site Visits	December 11 - 14, 2008
Inform Successful Proposer(s) and Finalize Contracts	Dec. 15, 2008 through January 9, 2009
Proposer(s) notified that the Evaluation Committee's recommendation is now public Via the Agenda posting on SANBAG's website	January 15, 2009
Contractor Selection Recommendation Reviewed by SANBAG Policy Committee	January 21, 2009
Contractor Recommendation Approved by SANBAG Board – Contract(s) Executed	February 4, 2009
Notice to Proceed Issued to Contractor(s) for Beats 1, 2, 3 and 5: 1. Truck Inspections	TBD, prior to 5/1/09

- | | |
|---------------------------------------|---|
| 2. Driver Training | TBD, prior to 5/1/09 |
| 3. Communications Equipment Installed | TBD, prior to 5/1/09 |
| 4. Trucks/drivers completely ready | Min. five days before
"Begin Service" date |
| 5. Begin Service (Friday) | May 1, 2009 |

13.0 FORM OF CONTRACT TO BE AWARDED

Under no circumstances will the contract price be exceeded without SANBAG approval. It is anticipated that SANBAG will enter into a time and material contract. The contract agreement in substantial form is contained in Attachment "C" of this RFP, subject to changes SANBAG may make as it sees fit prior to execution.

14.0 SANBAG RIGHTS

SANBAG may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by a Proposer, and require additional evidence of qualifications to perform the Scope of Services described in this RFP. SANBAG reserves the right to:

1. Reject any or all of the proposals for any reason.
2. Issue subsequent Requests For Proposals.
3. Cancel the entire Request For Proposal.
4. Remedy or overlook technical errors in the Request for Proposal process.
5. Appoint Evaluation Committees to review proposals.
6. Seek the assistance of outside technical experts in proposal evaluation.
7. Approve or disapprove the use of particular subcontractors.
8. Establish a short list of Proposers eligible for discussions after review of written proposals.
9. Negotiate with any, all, or none of the respondents to the RFP.

10. Solicit BAFO's from all or some of the Proposers.
11. Award a contract to one or more Proposers.
12. Accept other than the lowest monetary offer.
13. Waive informalities and minor irregularities in proposals.

This RFP does not commit SANBAG to enter into a contract, nor does it obligate SANBAG to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

15.0 **COST AND PRICE PROPOSAL**

The Proposer shall provide a firm and fixed rate specifying a price per service hour to perform all of the work specified in the Scope of Services.

Proposers may propose for all Beats. **However, the Proposer must propose for each Beat separately (a separate proposal packet for each individual beat). Each Beat will be evaluated separately, and the all inclusive flat hourly rate proposed must not be dependent on being awarded another Beat. It is possible that each of the four individual Beat areas described here within will be awarded to four different operators. Beats proposed as a package WILL NOT be accepted.** Attachment A shows each beat's required number of vehicles.

The proposal price shall be based on an hourly cost for supplying the required number of FSP vehicles and operators for beat's hours of operations as described in Attachment A, Scope of Services, as well as for furnishing all labor, materials, tools, equipment, operating costs, insurance, overhead and incidentals as defined in Request for Proposals.

All proposals shall be submitted using Attachment B, Price Summary Sheet. Each proposal shall include the year, manufacture, model, current mileage, and vehicle identification number (VIN) of each truck that will be used for the project. The same information shall be provided for spare (also known as the "back-up") vehicle. If a Proposer does not own the vehicles, but plans to acquire the vehicles, a statement as to how the vehicles will be acquired and the time line for acquisition shall be provided.

16.0 **PROTESTS**

Proposers may protest the recommended award made by SANBAG, provided the protest is in writing, contains the title of the RFP, is delivered to SANBAG, and is submitted within ten (10) calendar days of the date on the notification of intent to award by the SANBAG Board of Directors. Grounds for a protest are that SANBAG failed to follow the selection procedures and adhered to requirements specified in the RFP or any addenda or amendments; there has been a violation of conflict of interest as provided by California Government Code Section 87100 et seq.; or there has been a violation of State or Federal law. Protests will not be accepted on any other grounds. In event of a protest, all protests will be handled by a panel designated by the SANBAG Executive Director, or his/her designee.

SANBAG will consider only those specific issues addressed in the written protest. A written response by SANBAG will be directed to the protesting Proposer within fourteen (14) business days of receipt of the protest, advising of the decision with regard to the protest and the basis for the decision.

ATTACHMENTS

ATTACHMENT A

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

BEAT DESCRIPTION

Beat #	CHP Area Beat #	Beat Description	One-Way Length in Miles	# FSP Trucks in both AM and PM
Beat 1	9	I-10 from the LA County Line to Haven	8.70	2
Beat 2	10	I-10 from Haven to Sierra	8.05	2
Beat 3	11	I-10 from Sierra to Waterman	9.04	2
Beat 5	23	I-15 from the Riverside County Line to Baseline	7.72	2
		Total Miles Covered by All Four Beats	33.51	

All beats would **operate from 5:30 to 8:30 am (M-F)**, and then from **3:00 to 7:00 pm (M-F)**.

Each Beat requires at least one backup truck available at all times. **SANBAG reserves the right to change Beat hours and operational requirements during the course of the contract.**

Please refer to Attached Map of beat areas

ATTACHMENT A

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL PRELIMINARY LIST OF FREEWAY SERVICE PATROL HOLIDAYS

Plan to submit your cost proposal to provide Freeway Service Patrol tow service, five days each week, Monday through Friday of each year during the contract term, except for the following ten holidays:

1. Martin Luther King, Jr. Day (Monday)
2. Presidents' Day (Monday)
3. Memorial Day (Monday)
4. Independence Day (July 4 - varies)
5. Labor Day (Monday)
6. Veterans Day (varies)
7. Thanksgiving Day (Thursday)
8. Day after Thanksgiving (Friday)
9. Christmas Day (December 25 - varies)
10. New Year's Day (January 1 – varies)

Total service hours per vehicle per year: 1,736

In addition to the above service hours, at the discretion of SANBAG and the CHP, additional service may be requested on certain "high traffic days" on/or following certain holidays (e.g. July 4th, Labor Day, Sunday following Thanksgiving Day, Memorial Day), in the afternoons for four (4) hours. Contractor will be notified at least one week prior to when this service is to be provided.

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL
FSP UNIFORM REQUIREMENTS



ATTACHMENT B

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

SAMPLE PROPOSAL LETTER

Proposer _____

KELLY LYNN, Air Quality/Mobility Programs Manager
SAN BERNARDINO ASSOCIATED GOVERNMENTS
1170 W. 3rd Street, 2nd Floor
SAN BERNARDINO, CALIFORNIA 92410-1715

In response to the Request for Proposal ("RFP"), for the San Bernardino County Freeway Service Patrol (FSP), we the undersigned hereby declare that we have carefully read and examined the RFP documents including any plans and specifications, attended the **MANDATORY** pre-proposal meeting, acknowledge receipt of any and all addenda, and hereby propose to perform and complete the work as required.

If proposal is accepted by SANBAG, the undersigned agrees to make available the services at the costs indicated on its Time and Material Proposal Form within one hundred and twenty (120) days from the date specified in the RFP for receipt of proposals.

If awarded a Contract, the undersigned agrees to execute a formal Contract Agreement as set forth in Attachment "C", within 30 calendar days following SANBAG acceptance of proposal, and will deliver to the SANBAG prior to execution of the Contract the necessary original Certificates of Insurance.

If the Proposer requests any changes to this Contract Agreement language, such requests must be included within this letter or it shall be understood that the Proposer accepts the terms and conditions contained in Attachment "C" of the RFP in its entirety.

Proposer represents that the following person(s) are authorized to negotiate on its behalf with the SANBAG in connection with this RFP:

(Name)_____ (Title) _____ (Phone) _____

(Name)_____ (Title) _____ (Phone) _____

(Name) _____ (Title) _____ (Phone) _____

The undersigned certifies that it has examined and is fully familiar with all of the provisions of the RFP Documents and is satisfied that they are accurate; that it has carefully checked all the words and figures and all statements made in the Proposal Requirements; that it has satisfied itself with respect to other matters pertaining to the proposal which in any way affect the work or the cost thereof. The undersigned hereby agrees that SANBAG will not be responsible for any errors or omissions in these RFP Documents.

**Proposer's Business Address
And Telephone/Fax Numbers
& Email Address (please note
all are required):**

BY: _____
(Signature)

(Type or Print Name)

(Title)

ATTACHMENT B

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

CONTRACTOR REPRESENTATIVE FORM

CONTRACTOR NAME: _____

PRINCIPAL: _____

(Print)

(Signature)

(Date)

ALTERNATE NO. 1 _____

ALTERNATE NO. 2 _____

ALTERNATE NO. 3 _____

The above named individuals have read and understand the FSP Contract. At least one of these individuals will be available at the contractor's office during FSP hours of operation and normal business hours to make operational decisions on behalf of the Contractor pursuant to the terms and conditions of the Contract.

ATTACHMENT B

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

TIME AND MATERIAL PROPOSAL FORM

NAME: _____ TITLE: _____

COMPANY NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

BUSINESS LICENSE NUMBER: _____

LICENSE CLASSIFICATION: _____

PROPOSAL: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **The DETAILED itemized cost schedule (on the following page) must be used for each beat, as a basis for your assumptions in developing the hourly rate. This schedule must be attached to your proposal to be accepted.**

Please refer to the attached schedule as well as Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

**Detailed Itemized Beat Cost Schedule
Must Be Submitted with Each Beat**

For Beat # _____

(Base these costs on the initial three year contract period only)

- | | | |
|---|----|--|
| a. Average Hourly Rate for the 3 year period | \$ | |
| b. Total Three Year Contract Cost for the Beat | | |
| (Average Hourly Rate above X 2 trucks x 1,736 hours of service X 3 years) | \$ | |

Provide an itemized cost schedule used to develop **hourly rate** by the following budget categories:

- | | | |
|--|----|--|
| c. Labor | \$ | |
| d. Benefits | \$ | |
| e. Equipment (Truck payment) | \$ | |
| f. Fuel (Operating as well as motorist) | \$ | |
| Identify average annual cost per gallon: \$ _____ | | |
| g. Insurance (Liability, Workers' Comp.) | \$ | |
| h. Materials and Supplies | \$ | |
| i. Other Incidentals (list) | \$ | |
| j. Profit/Overhead | \$ | |
| Total cost per Hour per Truck (sum of c. thru j.) | | |
| must agree with cost per hour which is line "a". Note this hourly rate must also coincide with the rate specified in the Price Summary Sheet for the initial contract term (3 year period) | \$ | |

AUTHORIZED SIGNATURE:

DATE:

Important Information regarding Price Summary Sheet A and B

Please note that for each Beat you submit you must complete Price Summary Sheet A. No exceptions. Price Summary Sheet A asks you to submit an hourly rate (for each primary truck), and to have an FSP certified back-up truck available for that specific Beat as well.

Price Summary Sheet B is optional. Price Summary Sheet B is for current San Bernardino FSP Tow Operators that have at least one Beat area and one back-up truck within San Bernardino County. If a tow operator falls under this minimum criterion, then they may submit Price Summary Sheet B as well.

Price Summary Sheet A is required of all tow operators, and your proposal shall be deemed non-compliant if Price Summary Sheet A is not included for each beat you submit. No exceptions.

If a tow operator submits Price Summary Sheet B, SANBAG and the evaluation team shall, at their sole discretion, determine if Price Summary Sheet A (includes a back-up truck for that specific Beat) or if Price Summary Sheet B (does not include an exclusive back-up truck for that specific Beat) is selected.

If SANBAG and the evaluation team select Price Summary Sheet B – the tow operator will not be required to have an exclusive back-up truck for that specific Beat area, however, the Contractor shall be required to have a back-up truck on the Beat within 45 minutes if needed. Selecting this option does not permit the Contractor not to fulfill their contractual responsibilities, such as not having a FSP certified back-up truck available as outlined in the RFP, the Contract and the SOP. Not having a back up truck available is not an allowable excuse for not fulfilling contractual responsibilities.

BEAT 1 **PRICE SUMMARY SHEET (A)**

Beat 1 – I-10 from the LA County Line to Haven

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

<u>TERM</u>	<u>HOURLY RATE</u>
Initial Term: February 4, 2009 through April 30, 2012 <i>(this rate must coincide with the rate identified in line "a" on the Detailed Itemized Cost Schedule)</i>	\$ _____
Option Term #1, May 1, 2012 – April 30, 2013	\$ _____
Option Term #2, May 1, 2013 – April 30, 2014	\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION - include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This offer remains firm for _____ days from the date of proposal.
 (Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

BEAT 1 **PRICE SUMMARY SHEET (B)**

Note: can only be completed by current San Bernardino FSP operators that currently have at least one San Bernardino FSP Beat and one certified FSP back-up truck. If a Contractor selects to complete Price Summary Sheet (B) they must be prepared for SANBAG and the Evaluation Committee to select Price Summary Sheet A or B.

Beat 1 – I-10 from the LA County Line to Haven

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

<u>TERM</u>	<u>HOURLY RATE</u>
Initial Term: February 4, 2009 through April 30, 2012	\$ _____
<i>(this rate must coincide with the rate identified in line "a" on the Detailed Itemized Cost Schedule)</i>	
Option Term #1, May 1, 2012 – April 30, 2013	\$ _____
Option Term #2, May 1, 2013 – April 30, 2014	\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION - include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____ DATE: _____

BEAT 2 PRICE SUMMARY SHEET (A)

Beat 2 - I-10 from Haven to Sierra

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

TERM

HOURLY RATE

Initial Term: February 4, 2009 through
April 30, 2012

\$ _____

*(this rate must coincide with the rate identified in line
"a" on the Detailed Itemized Cost Schedule)*

Option Term #1, May 1, 2012 – April 30, 2013

\$ _____

Option Term #2, May 1, 2013 – May 30, 2014

\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION – include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

Year	Manufacture	Model	VIN	Mileage
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

BEAT 2
PRICE SUMMARY SHEET (B)

Note: can only be completed by current San Bernardino FSP operators that currently have at least one San Bernardino FSP Beat and one certified FSP back-up truck. If a Contractor selects to complete Price Summary Sheet (B) they must be prepared for SANBAG and the Evaluation Committee to select Price Summary Sheet A or B.

Beat 2 - I-10 from Haven to Sierra

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

TERM

HOURLY RATE

Initial Term: February 4, 2009 through
April 30, 2012

\$ _____

*(this rate must coincide with the rate identified in line
"a" on the Detailed Itemized Cost Schedule)*

Option Term #1, May 1, 2012 – April 30, 2013

\$ _____

Option Term #2, May 1, 2013 – April 30, 2014

\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION - include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
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_____	_____	_____	_____	_____
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This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

BEAT 3 PRICE SUMMARY SHEET (A)

Beat 3 - I-10 from Sierra to Waterman

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

<u>TERM</u>	<u>HOURLY RATE</u>
Initial Term: February 4, 2009 through April 30, 2012 <i>(this rate must coincide with the rate identified in line "a" on the Detailed Itemized Cost Schedule)</i>	\$ _____
Option Term #1, May 1, 2012 – April 30, 2013	\$ _____
Option Term #2, May 1, 2013 – April 30, 2014	\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION– include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

Year	Manufacture	Model	VIN	Mileage
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

**BEAT 3
PRICE SUMMARY SHEET (B)**

Note: can only be completed by current San Bernardino FSP operators that currently have at least one San Bernardino FSP Beat and one certified FSP back-up truck. If a Contractor selects to complete Price Summary Sheet (B) they must be prepared for SANBAG and the Evaluation Committee to select Price Summary Sheet A or B.

Beat 3 - I-10 from Sierra to Waterman

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

TERM

HOURLY RATE

Initial Term: February 4, 2009 through
April 30, 2012

\$ _____

*(this rate must coincide with the rate identified in line
"a" on the Detailed Itemized Cost Schedule)*

Option Term #1, May 1, 2012 – April 30, 2013

\$ _____

Option Term #2, May 1, 2013 – April 30, 2014

\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION - include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
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_____	_____	_____	_____	_____
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This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

BEAT 5 PRICE SUMMARY SHEET (A)

Beat 5 – I-15 from the Riverside County Line to Baseline

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

<u>TERM</u>	<u>HOURLY RATE</u>
Initial Term: February 4, 2009 through April 30, 2012 <i>(this rate must coincide with the rate identified in line "a" on the Detailed Itemized Cost Schedule)</i>	\$ _____
Option Term #1, May 1, 2012 – April 30, 2013	\$ _____
Option Term #2, May 1, 2013 – April 30, 2014	\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION– include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

**BEAT 5
PRICE SUMMARY SHEET (B)**

Note: can only be completed by current San Bernardino FSP operators that currently have at least one San Bernardino FSP Beat and one certified FSP back-up truck. If a Contractor selects to complete Price Summary Sheet (B) they must be prepared for SANBAG and the Evaluation Committee to select Price Summary Sheet A or B.

Beat 5 – I-15 from the Riverside County Line to Baseline

Instructions: On this form please quote the firm-fixed rate that will be charged for each vehicle service hour for the services outlined in the Scope of Services presented in this RFP. Prices must be submitted for the initial term as well as the "option terms". The vehicle service hour proposed shall include all direct costs, indirect costs, and profit.

TERM

HOURLY RATE

Initial Term: February 4, 2009 through
April 30, 2012

\$ _____

*(this rate must coincide with the rate identified in line
"a" on the Detailed Itemized Cost Schedule)*

Option Term #1, May 1, 2012 – April 30, 2013

\$ _____

Option Term #2, May 1, 2013 – April 30, 2014

\$ _____

NOTE: Your proposal should take into consideration all vehicles, equipment, operating cost, insurance, overhead, training classes, personnel, tools, fuel (for motorist as well as vehicles) supplies, expendable items, incidentals, etc. **A DETAILED itemized cost schedule used to develop hourly rate must be attached for proposal to be accepted.** Please refer to Section 4, Scope of Services, to ensure that you have covered all possible costs in your proposal.

VEHICLE INFORMATION - include VIN and mileage of existing vehicles. If you plan to purchase new vehicles, under the VIN and Mileage indicate "Plan to purchase new vehicles"

<u>Year</u>	<u>Manufacture</u>	<u>Model</u>	<u>VIN</u>	<u>Mileage</u>
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_____	_____	_____	_____	_____
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_____	_____	_____	_____	_____
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This offer remains firm for _____ days from the date of proposal.
(Minimum 120 days)

AUTHORIZED SIGNATURE: _____

DATE: _____

ATTACHMENT B

SAN BERNARDINO COUNTY FREEWAY SERVICE PATROL

PROPOSAL FORM

FIRM NAME: _____

This form must be completed by owner or authorized representative. The purpose of this form is to ensure that you are aware of all costs of Freeway Service Patrol service and to simplify the selection panel's review of your proposal. All questions must be answered. (DO NOT SIMPLY SAY "REFER TO RFP PAGE #xx")

UNDERSTANDING OF CONTRACT TERMS:

1. Owner's Number of Years of Tow Truck Operations
(5 years minimum):

Years as Owner: _____ Years in Towing Business: _____

Years in CHP Rotation Tow: _____

Current Number of Tow Trucks Operating: _____

2. FSP Beat Operating Hours: _____

3. Describe Activities Prohibited by FSP Contractors:

4. Describe FSP Contractor Duties on a Daily Basis:

6. How Frequently will Your Trucks be Inspected by CHP?

6. What Tests Must an FSP Driver Pass before Operating FSP Service?

A. _____

B. _____

C. _____

7. What Does an FSP Driver Wear?

8. What Equipment is Found on an FSP Tow Truck? (Attach separate list)

9. What are the FSP Insurance Requirements You Must Meet?

10. How Many Trucks (including back-up trucks) and Drivers Must You Have for this Beat? Attach a list of trucks (to be acquired and/or currently owned) that will be used for the FSP service. Include the year, manufacturer, model,

current mileage and vehicle identification number (VIN). (See RFP Section 4.4, Equipment Requirements). If a Proposer does not own the required number of trucks for the FSP Beat, a statement as to how the new trucks will be required and the timeline for acquisition must be provided with the list of trucks.

11. Who May We Contact by Phone for References?
(Provide at least three Client references. Do not include SANBAG, CHP, Caltrans, banks, equipment suppliers, friends or relatives. Previous client rates need not be included.)

Client Name & Address	Contact Person	Phone #
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

12. Additional Information may be Attached.

Name: _____ Date:_____

Name of Assistants Completing Form: _____

Note Items in red/bold/underline will be filled in with contract execution

ATTACHMENT C

CONTRACT NO. C09XXX

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS
AND
[NAME OF CONTRACTOR]

FOR
FREEWAY SERVICE PATROL FOR BEAT # Y WITHIN SAN BERNARDINO COUNTY

1. PARTIES AND DATE.

1.1 This Contract is made and entered into this 4th day of February, 2008, by and between the SAN BERNARDINO ASSOCIATED GOVERNMENT referred to herein as "SANBAG", and [NAME OF FIRM] and referred to herein as "CONTRACTOR", a [LEGAL STATUS OF CONTRACTOR e.g., CORPORATION].

1.2 The California Highway Patrol herein referred to as "CHP" and California Department of Transportation, herein referred to as "Caltrans" are hereby expressly designated as third-party beneficiaries of CONTRACTOR'S performance under this Contract.

2. RECITALS.

- 2.1 **WHEREAS**, SANBAG, a California County Transportation Commission, exists under the authority of Section 130050 et seq. of the California Public Utilities Code;
- 2.2 **WHEREAS**, SANBAG requires the services of a Contractor to provide the professional services as described in the Scope of Services;
- 2.3 **WHEREAS**, SANBAG has determined that Contractor is best qualified to perform the required services;
- 2.4 **WHEREAS**, the Contractor is able and willing to perform the required services under the terms and conditions of this Contract;

NOW, THEREFORE, San Bernardino Associated Governments and CONTRACTOR hereby agree as follows:

3. TERMS.

3.1 General Scope of Services. The purpose of the project is to provide for the rapid removal of disabled vehicles and those involved in minor accidents from the freeway. Where conditions permit, safe removal of small debris will be required. Contractor vehicles shall be exclusively dedicated to the service during the hours of operation. All vehicle maintenance activities shall be conducted during non-service hours.

The Contractor's vehicle operators shall assist motorists involved in minor accidents and those with disabled vehicles. They shall be responsible for clearing the freeway of automobiles, small trucks and small debris. When and where conditions warrant, service may be executed on the freeway shoulders. Where conditions do not warrant, vehicle operators will remove the vehicles from the freeway to provide service. The FSP vehicles shall continuously patrol their assigned beat, respond to CHP dispatches for service, use the designated turnaround locations and use the CHP identified designated drop locations.

Freeway Service Patrol vehicle operators may be required to change flat tires, provide "jump" starts, provide one gallon of gasoline or diesel fuel, temporarily tape cooling system hoses and refill radiators. Vehicle operators may spend a maximum of 10 minutes per disablement in attempting to mobilize a vehicle.

All FSP services shall be provided at no cost to the motorist. FSP vehicle operators shall not be accept gratuities, perform secondary towing services, recommend secondary tows, or recommend repair/body shop businesses. To promote a safe work environment and to maintain a level of professionalism, the Standard Operating Procedures (SOP) manual must be followed by the tow company and their vehicle operators as this document and all updates will be incorporated into the Contractor's agreement. Please note that the SOP is updated as needed, and that the Contractor is responsible to operate and adhere to the most recent version of the SOP at all times. Drivers found not to be in compliance with FSP procedures, as defined in the SOP, may be suspended or terminated from the FSP program and the company may be fined three (3) times the hourly contract rate in one (1) minute increments until a replacement vehicle is provided (Driver and Truck must return to Beat compliant with all FSP requirements), or fined for the entire shift at three (3) times the hourly rate at the discretion of the FSP Field Supervisors.

If a vehicle cannot be mobilized within the ten (10) minute time limit, it shall be towed to a designated drop location identified by the CHP. The motorist can request the FSP vehicle operator to call the CHP Communications center to request a CHP rotational tow or other services. FSP operators shall not be allowed to tow as an independent contractor from an incident that occurred during the FSP shift unless called as a rotation

tow by CHP. If called as a rotation tow after a FSP shift, the vehicle operator must remove all FSP markings and change his/her FSP uniform.

There may be some instances where FSP operators may be requested to provide assistance to CHP officers. Freeway Service Patrol operators shall follow the instructions of the CHP officer at the scene of any incident within the scope of the Freeway Service Patrol program.

3.2 Equipment Requirements. All equipment requirements outlined in the RFP are hereby made part of this Contract.

3.3 Commencement of Services. The CONTRACTOR shall commence work upon receipt of a written Notice to Proceed from SANBAG.

3.4 Term. The term of this Contract shall be from **February 4, 2009** through **April 30, 2012** unless earlier terminated as provided herein. SANBAG, at its sole discretion, may renew this Contract for a total of two (2) separate one year terms, based on the Compensation and Payment schedule provided in Exhibit "B". SANBAG shall also have the right to renew this contract from one month up to a one year term after the initial term by providing notice as provided below. SANBAG must provide written notice to CONTRACTOR no less than ninety (90) days prior to the end of the applicable term, indicating its renewal of the Contract. CONTRACTOR shall complete the Services within the term of this Contract, and shall meet any other established schedules and deadlines. All applicable indemnification provisions of this Contract shall remain in effect following the termination of this Contract.

3.5 SANBAG's Representative. SANBAG hereby designates the SANBAG Executive Director or his or her designee, to act as its Representative for the performance of this Contract ("SANBAG's Representative"). SANBAG's Representative shall have the authority to act on behalf of SANBAG for all purposes under this Contract. SANBAG's Representative shall also review and give approval, as needed, to the details of CONTRACTOR'S work as it progresses. CONTRACTOR shall not accept direction or orders from any person other than the SANBAG's Representative or his or her designee.

3.6 CONTRACTOR'S Representative. CONTRACTOR hereby designates **[__INSERT NAME OR TITLE__]** to act as its Representative for the performance of this Contract ("CONTRACTOR's Representative"). CONTRACTOR's Representative shall have full authority to act on behalf of CONTRACTOR for all purposes under this Contract. The CONTRACTOR's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Contract. CONTRACTOR shall work closely and cooperate fully with SANBAG's Representative and any other agencies which may have jurisdiction over or an interest in the Services. CONTRACTOR's Representative shall be available to the

SANBAG staff at all reasonable times. Any substitution in CONTRACTOR's Representative shall be approved in writing by SANBAG's Representative.

3.7 Substitution of Key Personnel. CONTRACTOR has represented to SANBAG that certain key personnel will perform and coordinate the Services under this Contract. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval by SANBAG's Representative. In the event that SANBAG's Representative and CONTRACTOR cannot agree as to the substitution of the key personnel, SANBAG shall be entitled to terminate this Contract for cause, pursuant to the provisions of Section 3.15. The key personnel for performance of this Contract are: [LIST NAMES AND TITLES].

3.8 Review of Work and Deliverables. All reports, working papers, and similar work products prepared for submission in the course of providing Services under this Contract may be required to be submitted to SANBAG's Representative in draft form, and SANBAG's Representative may require revisions of such drafts prior to formal submission and approval. In the event that SANBAG's Representative, in his sole discretion, determines the formally submitted work product to be inadequate, SANBAG's Representative may require CONTRACTOR to revise and resubmit the work at no cost to SANBAG. Upon determination by SANBAG that CONTRACTOR has satisfactorily completed the Services required under this Contract and within the term set forth in Section 3.4, SANBAG shall give CONTRACTOR a written Notice of Final Completion. Upon receipt of such notice, CONTRACTOR shall incur no further costs hereunder, unless otherwise specified in the Notice of Completion. CONTRACTOR may request issuance of a Notice of Final Completion when, in its opinion, it has satisfactorily completed all Services required under the terms of this Contract.

3.9 Appearance at Hearings. If and when required by SANBAG, CONTRACTOR shall render assistance at public hearings or other meetings related to the Project or necessary to the performance of the Services.

3.10 Standard of Care: Licenses. CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform all Services, duties and obligations required by this Contract to fully and adequately complete the Project. CONTRACTOR shall perform the Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. CONTRACTOR further represents and warrants to SANBAG that its employees and subcontractors have all licenses, permits, qualifications (including medical certification) and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Contract. CONTRACTOR shall perform, at its own cost and expense and without reimbursement from SANBAG, any services necessary to correct errors or omissions which are caused by the CONTRACTOR's failure to comply with the standard of care provided for herein, and shall be fully responsible

to SANBAG for all damages and other liabilities provided for in the indemnification provisions of this Contract arising from the CONTRACTOR's errors and omissions. Any employee of CONTRACTOR or its subcontractors who is determined by SANBAG to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SANBAG, shall be promptly removed from the Project by the CONTRACTOR and shall not be re-employed to perform any of the Services or to work on the Project.

3.11 Opportunity to Cure. SANBAG may provide CONTRACTOR an opportunity to cure, at CONTRACTOR's expense, all errors and omissions which may be disclosed during Project implementation. Should CONTRACTOR fail to make such correction in a timely manner, such correction may be made by SANBAG, and the cost thereof charged to CONTRACTOR.

3.12 Inspection of Work. CONTRACTOR shall allow SANBAG's Representative to inspect or review CONTRACTOR's work in progress at any time. SANBAG/Caltrans/CHP also reserves the right to audit all paperwork demonstrating that CONTRACTOR participates in an employee alcohol/drug-testing program and the DMV Pull Notice Program.

3.13 Laws and Regulations. CONTRACTOR shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. CONTRACTOR shall be solely liable for all violations of such laws and regulations in connection with Services. If the CONTRACTOR performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SANBAG, CONTRACTOR shall be solely responsible for all costs arising there from. CONTRACTOR shall defend, indemnify and hold SANBAG, their officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.14 Damage Complaints. Upon receiving a damage complaint from a motorist assisted by the Contractor, that the Contractor damaged their vehicle while lending assistance, the Contractor shall notify CHP immediately regarding the nature of the damage complaint and its disposition. The Contractor shall reply to the motorist by telephone within 24 hours of receiving the damage complaint notification. If necessary, the Contractor shall send either his/her authorized representative or his/her insurance company representative to inspect the vehicle and complete an incident report within 48 hours after receiving the damage complaint. If the investigation shows that damage to the vehicle could have been caused by the Contractor, the Contractor shall negotiate in good faith to try and resolve the issue and shall report to the CHP the result of the negotiations. All complaints shall be resolved within a reasonable period of time after being notified.

3.14.1 Complaint Review Committee. Voting members of the FSP Technical Advisory Committee (FSP TAC) is hereby designated as the Damage Complaint Review Committee. The Technical Advisory Committee is composed of voting members from CHP, the Commission and Caltrans. If the Committee finds that justifiable complaints are not resolved within a reasonable time frame, it can recommend that payment to the Contractor in the amount of the damage claim may be deducted from the Contractor's monthly invoice.

3.15 Termination.

3.15.1 Notice; Reason. SANBAG may, by written notice to CONTRACTOR, terminate this Contract, in whole or in part, including, without limitation, the geographical territory covered by this Contract, at any time by giving written notice to CONTRACTOR of such termination, and specifying the effective date thereof ("Notice of Termination"). Such termination may be for SANBAG's convenience or because of CONTRACTOR's failure to perform its duties and obligations under this Contract, including, but not limited to, the failure of CONTRACTOR to timely perform Services pursuant to the Scope of Services described in Section 3, entitled "Terms," as well as Section 4 of the RFP. CONTRACTOR may not terminate this Contract except for cause.

3.15.2 Discontinuance of Services. Upon receipt of the written Notice of Termination, CONTRACTOR shall discontinue all affected Services as directed in the Notice or as otherwise provided herein, and deliver to SANBAG all Documents and Data, as defined in this Contract, as may have been prepared or accumulated by CONTRACTOR in performance of the Services, whether completed or in progress.

3.15.3 Effect of Termination For Convenience. If the termination is to be for the convenience of SANBAG, SANBAG shall compensate CONTRACTOR for Services fully and adequately provided through the effective date of termination as provided in the Notice of Termination. Such payment shall include a pro-rated amount of profit, if applicable, up through the date of such effective date, but no amount shall be paid for anticipated profit on unperformed Services past such effective date. CONTRACTOR shall provide documentation deemed adequate by SANBAG's Representative to show the Services actually completed by CONTRACTOR prior to the effective date of termination. This Contract shall terminate on the effective date of the Notice of Termination.

3.15.4 Effect of Termination for Cause. If the termination is for cause, CONTRACTOR shall be compensated for those Services which have been fully and adequately completed and accepted by SANBAG as of the date provided in the Notice of Termination. In such case, SANBAG may take over the work and prosecute the same to completion by contract or otherwise. Further, CONTRACTOR shall be liable

to SANBAG for any reasonable additional costs incurred to revise work for which SANBAG has compensated CONTRACTOR under this Contract, but which SANBAG has determined in its sole discretion needs to be revised, in part or whole, to complete the Project. Termination of this Contract for cause may be considered by SANBAG in determining whether to enter into future Contracts with CONTRACTOR.

3.15.5 Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

3.15.6 Procurement of Similar Services. In the event this Contract is terminated, in whole or in part, as provided by this Section, SANBAG may procure, upon such terms and in such manner as it deems appropriate, services similar to those terminated.

3.15.7 Waivers. CONTRACTOR, in executing this Contract, shall be deemed to have waived any and all claims for damages which may otherwise arise from SANBAG's termination of this Contract, for convenience or cause, as provided in this Section.

3.15.8 Authorization to Terminate. The Executive Director of SANBAG shall have the full authority and discretion to exercise SANBAG's rights under this Article 3.15 Termination.

3.16 Trend Meetings. CONTRACTOR shall attend, or send a designated management-level representative to all trend meetings (i.e. required FSP TAC meeting which meets every other month). These trend meetings will encompass focused and informal discussions concerning but not limited to; scope, services, schedule, and current progress of services, relevant cost issues, and future project objectives. CONTRACTOR shall be responsible for having a representative attend all meetings (i.e. FSP TAC meeting) that has the ability to make management-level decisions on the behalf of the Contractor. If the Contractor cannot have a management-level representative at a meeting, Contractor shall notify SANBAG and CHP prior to the meeting. Management-level attendance at these meetings shall be considered part of the Contractor's contractual responsibility. Meetings are scheduled, and Contractor will be notified no later than three (3) working days prior to the meeting.

3.16.1 Progress Reports. As part of its Invoice, CONTRACTOR shall submit a Quarterly Progress Report, in a form determined by SANBAG, which will indicate the progress achieved during the previous month in relation to the Schedule of Services. Submission of such progress report by CONTRACTOR shall be a condition precedent to receipt of payment from SANBAG for each monthly invoice submitted.

3.16.2 Payment Schedule. Invoice periods shall be based upon a calendar month, beginning with the first day of the month. SANBAG shall reimburse CONTRACTOR for Services adequately provided under this Contract within 30 days of receiving the current period invoice. If SANBAG fails to pay any amount owed to

CONTRACTOR under this Contract within thirty (30) days after receipt of the invoice, CONTRACTOR may give SANBAG a notice of failure to pay which shall set forth the invoice(s) and amount(s) which CONTRACTOR believes are over thirty (30) days overdue. SANBAG shall pay any undisputed invoice(s) and amount(s) within thirty (30) days of receipt of a notice of failure to pay.

3.17 Delay in Performance.

3.17.1 Excusable Delays. Should CONTRACTOR be delayed or prevented from the timely performance of any act or Services required by the terms of the Contract by reason of acts of God or of the public enemy, acts or omissions of the SANBAG or other governmental agencies in either their sovereign or contractual capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, performance of such act shall be excused for the period of such delay.

3.17.2 Written Notice. If CONTRACTOR believes it is entitled to an extension of time due to conditions set forth in subsection 3.17.1, CONTRACTOR shall provide written notice to the SANBAG within seven (7) working days from the time CONTRACTOR knows, or reasonably should have known, that performance of the Services will be delayed due to such conditions. Failure of CONTRACTOR to provide such timely notice shall constitute a waiver by CONTRACTOR of any right to an excusable delay in time of performance.

3.17.3 Mutual Contract. Performance of any Services under this Contract may be delayed upon mutual agreement of the Parties. Upon such agreement, CONTRACTOR's Schedule of Services (as defined in their Proposal) shall be extended as necessary by SANBAG. CONTRACTOR shall take all reasonable steps to minimize delay in completion, and additional costs, resulting from any such extension.

3.18 Status of CONTRACTOR/Subcontractors.

3.18.1 Independent CONTRACTOR. The Services shall be performed by CONTRACTOR or under its supervision. CONTRACTOR will determine the means, methods and details of performing the Services subject to the requirements of this Contract. SANBAG retains CONTRACTOR on an independent CONTRACTOR basis and not as an employee, agent or representative of the SANBAG. CONTRACTOR retains the right to perform similar or different services for others during the term of this Contract. Any additional personnel performing the Services under this Contract on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. CONTRACTOR shall pay all wages, salaries and other amounts due such personnel in connection with their performance of Services and as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, disability insurance, and workers' compensation insurance.

3.18.2 Assignment or Transfer. CONTRACTOR shall not assign, hypothecate, or transfer, either directly or by operation of law, this Contract or any interest herein, without the prior written consent of SANBAG. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, SANBAG may transfer or assign any and all of its rights and obligations under this Contract, including, without limitation the rights to terminate this Contract, as assigned, pursuant to Section 3.15 hereof.

3.18.3 Subcontracting. CONTRACTOR shall not subcontract any portion of the work or Services required by this Contract, except as expressly stated herein, including the Scope of Work, without prior written approval of the SANBAG. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Contract.

3.19 Ownership of Materials and Confidentiality.

3.19.1 Documents & Data; Licensing of Intellectual Property. All plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings, spreadsheets, or data magnetically or otherwise recorded on computer diskettes, prepared by or on behalf of CONTRACTOR under this Contract ("Documents and Data"), shall be made available to SANBAG at all times during this Contract and shall become the property of SANBAG upon the completion of the term of this Contract, except that CONTRACTOR shall have the right to retain copies of all such Documents and Data for its records. Should CONTRACTOR, either during or following termination of this Contract, desire to use any Documents and Data, it shall first obtain the written approval of SANBAG. This Contract creates a no-cost, non-exclusive and perpetual license for SANBAG to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in the Documents and Data which are prepared or caused to be prepared by CONTRACTOR under this Contract ("Intellectual Property"). CONTRACTOR shall require all subcontractors to agree in writing that SANBAG are granted a no-cost, non-exclusive and perpetual license for any Intellectual Property the subcontractor prepares under this Contract. CONTRACTOR represents and warrants that CONTRACTOR has the legal right to license any and all Intellectual Property prepared or caused to be prepared by CONTRACTOR under this Contract. SANBAG shall not be limited in any way in its use of the Intellectual Property at any time, provided that any such use not within the purposes intended by this Contract shall be at SANBAG's sole risk.

3.19.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to CONTRACTOR in connection with the performance of this Contract shall be held confidential by CONTRACTOR to the extent permitted by law, including, without limitation, the California Public Records Act, Government Code section 6250 et seq.

Such materials shall not, without the prior written consent of SANBAG, be used by CONTRACTOR for any purposes other than the performance of the Services as provided herein. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project, except as provided herein. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is generally known, or becomes known, to the related industry shall be deemed confidential. CONTRACTOR shall not use SANBAG's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SANBAG.

3.20 Indemnification. CONTRACTOR shall indemnify and hold SANBAG, its directors, officials, officers, agents, CONTRACTORS, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the CONTRACTOR, its officials, officers, employees, agents, consultants, and CONTRACTORS arising out of or in connection with the performance of the Services, the Project or this Contract, including without limitation, the payment of all consequential damages and other related costs and expenses. CONTRACTOR shall defend, at CONTRACTOR's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SANBAG, their directors, officials, officers, agents, CONTRACTOR's, consultants, employees and volunteers. CONTRACTOR shall pay and satisfy any judgment, award or decree that may be rendered against SANBAG, or their directors, officials, officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. CONTRACTOR shall reimburse SANBAG and their directors, officials, officers, agents, consultants, employees and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the CONTRACTOR, SANBAG, or their directors, officials, officers, agents, consultants, employees and volunteers.

3.21 Insurance.

3.21.1 Time for Compliance. CONTRACTOR shall not commence work under this Contract until it has provided evidence satisfactory to SANBAG that it has secured all insurance required under this section. In addition, CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.21.2 General Liability Insurance. CONTRACTOR shall procure a Commercial General Liability Insurance Policy in amounts and form set forth below:

3.21.2.1 Commercial General Liability Insurance. A policy of Commercial General Liability which provides limits of not less than:

- a. Per occurrence: \$1,000,000
- b. Project Specific Aggregate: \$1,000,000
- c. Products/Completed Operations: \$1,000,000
- d. Personal Injury Limit: \$1,000,000

3.21.2.2 General Liability Policy Coverage. Any general Liability policy provided by CONTRACTOR hereunder shall include the following coverage:

- a. Premises and Operations
- b. Products/Completed Operations with limits of at least one million dollars (\$1,000,000) per occurrence to be maintained for three years following acceptance of the work by SANBAG.
- c. Contractual Liability expressly including liability assumed under this Contract.
- d. Independent Contractor's Liability.

If CONTRACTOR is unable to provide the \$1,000,000 aggregate limit indicated in Section 3.21.2.1 and 2 above, CONTRACTOR shall provide an Excess or umbrella option which achieves the \$1,000,000 aggregate per project specific aggregate.

3.21.2.3 Additional Insured Endorsement. Any general liability policy provided by CONTRACTOR hereunder shall contain an additional insured endorsement which applies its coverage to SANBAG, the members of their Board of Directors and their officers, agents, employees and volunteers. Any SANBAG self-funded program and/or insurance policy, shall be excess only and not contributing to such coverage.

3.21.2.4 Form of General Liability Insurance Policies. All general liability policies shall be written to apply to all bodily injuries, including death, property damage, personal injuries and other covered loss, however, occasioned, occurring during the policy term, and shall specifically insure the performance by CONTRACTOR of that part of the indemnity agreement contained in this Contract relating to liability for injury to or death of persons and damage to property per project, per location aggregate endorsement. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, SANBAG may require additional coverage to be purchased by CONTRACTOR to restore the required limits. CONTRACTOR may combine primary, umbrella and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the Additional Insured Endorsement described above.

3.21.3 Comprehensive Automobile Liability Insurance.

CONTRACTOR shall procure Comprehensive Automobile Liability Insurance written for bodily injury, including death, and property damage, however occasioned occurring during the policy term, in the amount of not less than one million dollar (\$1,000,000), combined single limits per occurrence, applicable to all owned, non-owned and hired vehicles. This coverage shall include contractual liability.

3.21.4 Statutory Worker's Compensation and Employer's Liability

Insurance. CONTRACTOR shall maintain a policy of California Worker's Compensation coverage in statutory amount and Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence for all employees of CONTRACTOR engaged in services or operations under this Contract. Coverage shall include the following endorsements:

3.21.4.1 Broad Form All – States endorsement.

3.21.5 Subcontractor's Insurance.

CONTRACTOR shall make certain that any and all subcontractors hired by the CONTRACTOR are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, CONTRACTOR shall indemnify and hold SANBAG harmless of and from any damages, lost or cost or expense pursuant to Section 3.19, Indemnification, incurred by SANBAG as a result thereof.

3.21.6 General Provisions.

3.21.6.1 Evidence of Insurance.

CONTRACTOR shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of this Contract, deliver to SANBAG certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that CONTRACTOR has obtained such coverage for the period of this Contract. CONTRACTOR shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to SANBAG within thirty (30) days prior to the expiration of the term of any policy required herein. CONTRACTOR shall permit SANBAG at all reasonable times to inspect any policies of insurance of CONTRACTOR which CONTRACTOR has not delivered to SANBAG.

3.21.6.2 Claims Made Coverage.

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- a. The policy retroactive date coincides with or preceded Contractor's commencement of work under this Contract (including subsequent policies purchased as renewals or replacements).

- b. CONTRACTOR will make every effort to maintain similar insurance during the required extended period of coverage following expiration of this Contract, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, CONTRACTOR shall purchase an extended reporting provision of at least two years to report claims arising in connection with this Contract.
- d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

3.21.7 Failure to Obtain or Maintain Insurance: SANBAG Remedies. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of this Contract, and SANBAG may, at its option, obtain and pay for such insurance and deduct from payments due to CONTRACTOR such amounts paid, or terminate this Contract for any such default by CONTRACTOR.

3.21.8 No Litigation of Obligations. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the CONTRACTOR, and any approval of said insurance by SANBAG or its insurance contractor(s), are not intended to or shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to this Contract, including, but not limited to, the provisions concerning indemnification.

3.21.9 Notice of Cancellation or Change of Coverage. All insurance and the certificates of insurance provided by CONTRACTOR must evidence that the insurer providing the policy will give SANBAG thirty (30) days written notice, at the address shown in Section 3.31, Notices, of this Contract, in advance of any lapse, cancellation, reduction or other adverse change respecting such insurance.

3.21.10 Qualifying Insurer. All policies of insurance required hereby shall be issued by companies which have been approved to do business in the State of California by the State Department of the Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A: VIII according to the current Best Current Rating Guide, or a company of equal financial stability as determined by SANBAG.

3.21.11 Review of Coverage. SANBAG retains the right at any time to review the coverage, form and amount of insurance required herein and may require CONTRACTOR to obtain additional insurance reasonably sufficient in coverage, form, amount to provide adequate protection against the kind and extent of risk which exists at the time of change in insurance required.

3.21.12 Safety. CONTRACTOR shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the CONTRACTOR shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.22 Fees and Payment.

3.22.1 Compensation. CONTRACTOR shall receive compensation from SANBAG, including authorized reimbursements, for all Services rendered under this Contract at the rates set forth in Compensation and Payment schedule provided in Exhibit "B" attached hereto and incorporated herein by reference.

3.22.2 Invoices. CONTRACTOR shall submit no more frequently than monthly, but no less than bi-monthly, an itemized statement ("Invoice") to SANBAG which indicates work completed and hours of Services rendered by CONTRACTOR. The Invoice format shall be approved by SANBAG prior to the submittal of the first Invoice. Each Invoice shall be accompanied by a monthly progress report covering the Invoice period and spreadsheets showing hours expended for each day of the month per vehicle per beat, and the total Project to date. Each Invoice shall include a cover sheet bearing a certification as to the accuracy of the statement signed by the CONTRACTOR's Project Manager or other authorized officer. Please note that if the invoice is completed incorrectly by the Contractor it will delay payment, otherwise upon receiving an invoice with no errors SANBAG pays invoices 30 day net.

3.22.3 Reimbursement for Expenses. CONTRACTOR shall not be reimbursed for any expenses unless specifically provided herein.

3.22.4 Taxes. CONTRACTOR shall pay any sales, use, or other taxes, if any, attributable to the provision of FSP Services.

3.22.5 Sources of Funding. It is understood that SANBAG funding for the Services under this Contract is being provided primarily from the State's FSP Funding program, and Measure I funding (San Bernardino County's ½ cent sales tax for transportation). It is agreed that at any time funds from the State and Measure I are not available to SANBAG for the full amount of this Contract, SANBAG may terminate this Contract pursuant to Section 3.15, Termination.

3.22.6 Extra Work. At any time during the term of this Contract, SANBAG may request CONTRACTOR to perform Extra Work. "Extra Work" shall mean any work which is determined by SANBAG to be necessary for proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the time of the execution of this Contract and was not included in the Scope of Work. Extra Work shall be reimbursed at the same hourly rate as identified in Exhibit B. CONTRACTOR shall not perform, nor be compensated for Extra Work without obtaining authorization in the form of a written Extra Work Order issued by SANBAG's Representative. For instance, Construction FSP services as it relates to construction activity and projects can be considered Extra Work. In the event an Extra Work Order is not issued and signed by SANBAG's Representative, CONTRACTOR shall not provide such Extra Work. However, no compensation or reimbursement for Extra Work shall be paid if it is not authorized by SANBAG and if the cumulative total of such Extra Work under the Contract exceeds \$25,000. All Extra Work in a cumulative total in excess of \$25,000 must be approved in advance by amendment to this Contract.

3.22.7 Most Favored Customer. CONTRACTOR agrees that, throughout the term of this Contract, it shall not enter into any "FSP" services agreement with any government agency with whom it has either existing contractual relationship or has no contractual relationship that predates this Contract, pursuant to which CONTRACTOR agrees to charge "FSP" services fees less than those as indicated in this Contract for substantially the same level of "FSP" services contemplated by this Contract. Should SANBAG establish that such lower fees have been agreed to by CONTRACTOR with another government agency, CONTRACTOR agrees to renegotiate the fees or to refund SANBAG an amount equal to the difference between the fees indicated in this Contract and the fees charged to other government agency customer.

3.23 Prohibited Interests.

3.23.1 Solicitation. CONTRACTOR maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Contract. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONTRACTOR, any fee, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, SANBAG shall have the right to rescind this Contract without liability.

3.23.2 Conflict of Interest. For the term of this Contract, no member, officer or employee of SANBAG, during the term of his or her service with SANBAG, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising there from.

3.23.3 Conflict of Employment. Employment by the CONTRACTOR of personnel currently on the payroll of SANBAG shall not be permitted in the performance of this Contract, even though such employment may occur outside of the

employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by the CONTRACTOR of personnel who have been on SANBAG payroll within one year prior to the date of execution of this Contract, where this employment is caused by and or dependent upon the CONTRACTOR securing this or related Contracts with SANBAG, is prohibited.

3.24 Accounting Records. CONTRACTOR shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Contract. All such records shall be clearly identifiable. CONTRACTOR shall allow a representative of SANBAG during normal business hours to examine, audit, and make transcripts or copies of any and all ledgers and books of account, invoices, vouchers, canceled checks, and any other records or documents created pursuant to this Contract. All such information shall be retained by CONTRACTOR for at least three (3) years following termination of this Contract.

3.25 Equal Opportunity Employment. CONTRACTOR represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. CONTRACTOR shall also comply with all relevant provisions of SANBAG's Minority Business Enterprise program, Affirmative Action Plan or other related SANBAG programs or guidelines currently in effect or hereinafter enacted.

3.26 Right to Employ Other CONTRACTORS. SANBAG reserve right to employ other CONTRACTORS in connection with the Project.

3.27 Governing Law. This Contract shall be governed by and construed with the laws of the State of California.

3.28 Venue. The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Contract will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

3.29 Time of Essence. Time is of the essence for each and every provision of this Contract.

3.30 Headings. Article and section headings, paragraph captions or marginal headings contained in this Contract are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

3.31 Notices. All notices permitted or required under this Contract shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONTRACTOR: <u>Name</u> <u>Title</u> <u>Address</u> <u>City, State Zip</u> Attn: _____	SAN BERNARDINO ASSOCIATED GOVERNMENTS (SANBAG) FSP Program 1170 W 3 rd St., 2 nd Flr. San Bernardino, CA 92410-1715 Attn: Executive Director	
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Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. mail, first class postage prepaid, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.32 Contract Documents and Conflicting Provisions. This Contract consists of, in addition to the Exhibits attached hereto and incorporated by reference herein, the following documents ("Contract Documents"): **(1) Request for Proposal No. C09093**, including all of the Exhibits attached thereto and incorporated by reference and any amendment or addendum thereto (the "Request for Proposal"); and (2) CONTRACTOR's response thereto, including any amendments or addendums. In the event that provisions of this Contract conflict in any way with the provisions of the Request for Proposal, and/or CONTRACTOR's response thereto, the terms of this Contract shall control. In the event that the provisions of the Request for Proposal conflict with CONTRACTOR's response thereto, the terms of the Request for Proposal shall control. Otherwise, the Contract Documents are intended to be complementary. Services required by one of the Contract Documents and not by others shall be performed as required by all. In the event that provisions of any attached exhibits conflict in any way with the provisions set forth in this Contract, the language, terms and conditions contained in this Contract shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the performance of the Services.

3.33 Amendment or Modification. No supplement, modification, or amendment of this Contract shall be binding unless executed in writing and signed by both Parties.

3.34 Entire Contract. This Contract contains the entire Contract of the Parties relating to the subject matter hereof and supersedes all prior negotiations, Contracts or understandings.

3.35 Invalidity; Severability. If any portion of this Contract is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.36 No Waiver. Failure of CONTRACTOR to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.37 Counterparts. This Contract may be signed in one or more counterparts, any one of which shall be effective as an original document.

3.38 Attorneys' Fees and Costs. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Section 3.20, Indemnification.

3.39 Consent. Whenever consent or approval of any party is required under this Contract, that party shall not unreasonably withhold nor delay such consent or approval.

IN WITNESS THEREOF, THE AUTHORIZED PARTIES HAVE BELOW SIGNED AND EXECUTED THE Contract ON THE EFFECTIVE DATE:

SAN BERNARDINO ASSOCIATED
GOVERNMENTS (SANBAG)

[CONTRACTOR'S COMPANY NAME]

Gary C. Ovitt, President

[Name, Title]

APPROVED AS TO LEGAL FORM
FOR SANBAG

Jean-Rene Basle
SANBAG Counsel

EXHIBIT "A"

Scope of Work

[INSERT SCOPE OF WORK FROM CONTRACTOR'S PROPOSAL]

EXHIBIT "B"

Compensation and Payment

[INSERT FINAL PRICE PROPOSALS FROM CONTRACTOR'S PROPOSAL]